

TAKAI *et al.*, SN 10/623,160
Amdt. filed 02/04/2005
Reply to OA mailed 11/04/2004

Dkt. 500.30802CC4/B8136-06EX
Page 9

REMARKS

This Amendment is responsive to the Office Action identified above, and is further responsive in any manner indicated below.

CORRECTION OF CROSS REFERENCE TO RELATED APPLICATIONS

Applicant has corrected minor errors in the information given in the section in the specification to identify related applications upon which benefit is claimed in the present case under §120. Such corrections are supported by the records in the Office files. Entry and approval of the corrections are respectfully requested.

PENDING CLAIMS

Claims 35-45 were pending for examination and consideration at the time of the Office Action. Unrelated to any prior art, scope or rejection, appropriate claims have been amended, added or cancelled (without prejudice or disclaimer) merely in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, such changes are unrelated to any prior art or scope adjustment, and are simply refocused claims in which Applicant is present interested. At entry of this paper, Claims 35-52 are pending for consideration and examination in the application.

§112, 2ND PARAGRAPH REJECTION OBIATED VIA CLAIM AMENDMENT

Claims 35-41 were rejected under 35 USC §112, second paragraph, as being indefinite for the concerns listed at Item 2 on page 2 of the Office Action. Unrelated to any rejection, Claim 35 has been carefully reviewed and carefully amended where

TAKAI *et al.*, SN 10/623,160
Amdt. filed 02/04/2005
Reply to OA mailed 11/04/2004

Dkt. 500.30802CC4/B8136-06EX
Page 10

appropriate in order to address the Office Action listed concerns. As the foregoing is believed to address all §112, second paragraph, concerns, reconsideration and withdrawal of the §112, second paragraph, rejection of Claim 35 (and Claims 36-41 dependent therefrom) are respectfully requested.

DOUBLE PATENTING REJECTION-TRAVERSED

At Items 4-7 spanning pages 3-13 of the Action, Claims 35-45 are rejected under the judicially-created doctrine of obviousness-type double patenting rejection as being allegedly unpatentable over various ones of patented claims in each of the prior related applications issued to patents upon which benefit is claimed under 35 USC §120, and all such double patenting rejections are respectfully traversed.

Comments throughout the Office Action allege the double patenting rejection of Claims 35 and 42 (and claims dependent thereon) are based upon ones of claims in each of the prior applications, and yet contradict such rejections by stating that the claims in the patent do not disclose presently-claimed features of the rejected claims. Given that the Office Action admits that the present claim limitations are not taught by the patents and, in accordance with §MPEP 804, Applicant respectfully submits that the requirements to support the double patenting rejections have not been fulfilled.

However, in order to travel a path of least resistance to obtaining a patent for the present application, submitted herewith is an executed Statutory (Terminal) Disclaimer to overcome the non-statutory double patenting rejection for each of the patents used in the rejections. As a result of the foregoing, reconsideration and

TAKAI *et al.*, SN 10/623,160
Amdt. filed 02/04/2005
Reply to OA mailed 11/04/2004

Dkt. 500.30802CC4/B8136-06EX
Page 11

withdrawal of the double patenting rejections of the subject claims are respectfully requested.

The above statements, or the filing of any Statutory Disclaimer, is not and should not be taken as any indication or admission that any of the rejections were valid, and is merely use of a procedural approach to obviate such rejections.

RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

EXAMINER INVITED TO TELEPHONE

The Examiner is invited to telephone the undersigned at the local D.C. area number of 703-312-6600, to discuss an Examiner's Amendment or other suggested actions for accelerating prosecution and moving this application to allowance.

TAKAI *et al.*, SN 10/623,160
Amdt. filed 02/04/2005
Reply to OA mailed 11/04/2004

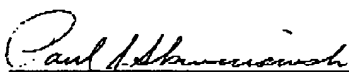
Dkt. 500.30802CC4/B8136-06EX
Page 12

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

This Amendment is being filed within the shortened statutory period for response set by the 4 November 2004 Office Action, and therefore, no Petition or extension fee is required. To whatever other extent is actually necessary, Applicant respectfully petitions the Commissioner for an extension of time under 37 CFR §1.136. Attached is a Form PTO-2038 authorizing payment of the requisite Statutory Disclaimer fee; no additional claims fees are required for entry of this paper. Please charge any actual deficiency in required fee to ATS&K Deposit Account No. 01-2135 (as Case No. 500.30802CC4).

Respectfully submitted,



Paul J. Skwierawski
Registration No. 32,173
ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 North Seventeenth Street, Suite 1800
Arlington, Virginia 22209-3873, USA
Telephone 703-312-6600
Facsimile 703-312-6666

Attachments:

Statutory (Terminal) Disclaimer
PTO-2038 (Fee Code 1814)